

REMARKS

In response to the restriction requirement in the Office Action dated January 10, 2005, Applicants hereby elect Group I, claims 1-4, and the species S-S-S-A-S-A-S-S-A, with traverse. The traversal is on the basis that, according to MPEP 803.04:

[T]o further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided sua sponte to partially waive the requirements of 37 CFR 1.141 et seq. and permit a reasonable number of such nucleotide sequences to be claimed in a single application. See Examination of Patent Applications Containing Nucleotide Sequences, 1192 O.G. 68 (November 19, 1996). It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction.

According to the above passage from the MPEP, up to ten sequences will be examined in a single application without restriction. Claim 4 currently recites three sequences, which is well below what the Office has found to be “a reasonable number for examination purposes.” In view of the above, Applicants respectfully request that all three sequences recited in claim 4 be examined with the elected invention.


Claims 1-4 have been amended above to change the “use of” language to “method” language to comply with U.S. patent law. In addition, claim 4 has been amended to employ appropriate Markush group language. No prohibited new matter has been added.

Applicants respectfully request favorable consideration of the pending claims and early indication of allowability. Should the Examiner find that an interview would expedite prosecution of the present application, he or she is respectfully requested to telephone the undersigned at her convenience.

If there is any additional fee due in connection with the filing of this Reply, please charge the fees to our Deposit Account No. 50-0310. Except for issue fees payable under 37 CFR §1.18, the commissioner is hereby authorized by this paper to charge any additional fees during the pendency of this application including fees due under 37 CFR §1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 CFR §1.136(a)(3).

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